

ESTTA Tracking number: **ESTTA771741**

Filing date: **09/20/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	P.C. Richard & Son Long Island Corp.
Granted to Date of previous extension	09/21/2016
Address	150 Price Parkway Farmingdale, NY 11735 UNITED STATES
Attorney information	Celeste M. Butera Hoffmann & Baron, LLP 6900 Jericho Turnpike Syosset, NY 11791 UNITED STATES cmbdocket@hbiplaw.com,cbutera@hbiplaw.com Phone:516-822-3550

### Applicant Information

Application No	86865182	Publication date	05/24/2016
Opposition Filing Date	09/20/2016	Opposition Period Ends	09/21/2016
Applicant	Aihua Tang Aihua Tang ARCADIA, CA 91007 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 2015/06/10 First Use In Commerce: 2015/06/10

All goods and services in the class are opposed, namely: Cell phone auxiliary cables; Cell phone-backplates; Cell phone battery chargers; Cell phone cases; Cell phone covers; Cell phone faceplates; Cell phone straps; Cell phones; Computer peripheral equipment; Computer cables; Computer keyboards; Computer keypads; Computer peripherals; Computer touchscreens; Laptop computers; Laptops; Mobile phones; Mouse pads; Protective covers for electronic reading devices; Radio transmitters; Radio transmitters and receivers; Radio receivers and transmitters; USB cables; USB cables for cellphones; USB charging ports; USB hubs; Wireless computer mice; Blank USB cards; Blank USB flash drives; Carrying cases for cell phones; Cases adapted formobile phones; Cases for mobile phones; Clear protective covers specially adapted for personal electronic devices, namely, note book, mobil phone, cell phone, photo viewer; Keyboards for mobile phones; Leather protective covers specially adapted for personal electronic devices, namely, mobil phone, cell phone, smart phone, photo viewer; Micro USB ports; Notebook and laptop computers; Protective covers and cases for cell phones, laptopsand portable media players; Stands adapted for mobile phones; Straps for mobile-phones; Touch pads; Vinyl covers specially adapted for cell phones, MP3 players, laptops, computers, portable satelliteradios, personal digital assistants, remote controls, and television satellite recorders; Wireless computer peripherals

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1395362	Application Date	10/07/1985
Registration Date	05/27/1986	Foreign Priority Date	NONE
Word Mark	NOBODY BEATS THE WIZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1983/05/00 First Use In Commerce: 1983/05/00 RETAIL STORE SERVICES FOR AUDIO AND VISUAL EQUIPMENT AND ACCESSORIES, ELECTRICAL APPLIANCES, AND RECORDS AND TAPES		

U.S. Registration No.	1905190	Application Date	12/24/1992
Registration Date	07/11/1995	Foreign Priority Date	NONE
Word Mark	NOBODY BEATS THE WIZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1983/05/00 First Use In Commerce: 1983/05/00 retail store services in the fields of audio and video equipment and accessories, computers and computer equipment and accessories, office equipment and accessories, computer software, photographic equipment, and household appliances		

U.S. Registration No.	1204051	Application Date	05/22/1980
Registration Date	08/03/1982	Foreign Priority Date	NONE
Word Mark	THE WIZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1976/03/00 First Use In Commerce: 1976/03/00 Retail Store Services for Audio and Visual Equipment		

U.S. Registration No.	1893461	Application Date	11/05/1992
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Registration Date	05/09/1995	Foreign Priority Date	NONE
Word Mark	THE WIZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1976/03/00 First Use In Commerce: 1976/03/00 retail store services in fields of consumer electronics and accessories, computer hardware and software, pre-recorded movies and music and household appliances		

Attachments	As_filed_WIZFUN_Notice_of_Opposition_2381_83.PDF(25221 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/celeste m. butera/
Name	Celeste M. Butera
Date	09/20/2016

In the matter of Application Serial No. 86/865,182: WIZFUN  
Filed: January 5, 2016  
Published for Opposition on: May 24, 2016

P.C. RICHARD & SON LONG ISLAND CORPORATION,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
AIHUA TANG,	:	
	:	
Applicant.	:	
	:	
	:	

## NOTICE OF OPPOSITION

P.C. Richard & Son Long Island Corporation (“Opposer”), a New York corporation, with offices at 150 Price Parkway, Farmingdale, New York 11735, believes that it will be damaged by registration of the mark shown in Serial No. 86/865,182 to Aihua Tang d/b/a TA WizFun (“Applicant”), which application was published for opposition on May 24, 2016, and hereby opposes, through its attorneys, the registration of said mark in International Class 009.

As grounds for opposition, Opposer alleges that:

1. Opposer is a New York corporation, with offices at 150 Price Parkway, Farmingdale, New York 11735.
2. Opposer markets and sells consumer electronics and accessories, computer hardware and software, pre-recorded movies and music, household appliances, audio and visual equipment including, but not limited to, smartphones, tablets, smartphone and tablet covers and

cases, cell phones, computer keyboards, clear protective covers for smartphones and tablets, carrying cases, and leather cases for smartphones and tablets.

3. Opposer utilizes the marks(s) THE WIZ and NOBODY BEATS THE WIZ as trademarks for its retail services in connection with its consumer electronics and appliances business.

4. Opposer is the owner of the following well-established mark(s): NOBODY BEATS THE WIZ, United States Trademark Registration No. 1,395,362; NOBODY BEATS THE WIZ, United States Trademark Registration No. 1,905,190; THE WIZ, United States Trademark Registration No. 1,204,051; and THE WIZ, United States Trademark Registration No. 1,893,461.

5. The trademarks have been continually and extensively used in commerce by Opposer prior to the application date of Applicant and prior to any date of first use by Applicant of its applied for mark WIZFUN.

6. Opposer is a well-known retail provider, and sells and markets consumer electronics, consumer electronics accessories, appliances and electronics, computers, hardware, software and audio and visual electronics and equipment including, but not limited to, smartphones, tablets, smartphone and tablet covers and cases, cell phones, computer keyboards, clear protective covers for smartphones and tablets, carrying cases, and leather cases for smartphones and tablets. The goods sold by Opposer are well-known and are known to be of good quality and service due to Opposer's extensive advertising and extensive good will built up by Opposer in its trademarks.

7. By virtue of the quality of Opposer's goods and services, and the extensive use and advertising of the trademarks in Paragraph 4, Opposer has built up and now owns an extremely valuable goodwill which is symbolized by its trademarks.

8. Opposer has made a substantial investment in developing, advertising and marketing its products bearing the THE WIZ and NOBODY BEATS THE WIZ mark(s). As a result of Opposer's efforts, consumers associate and attribute usage of THE WIZ and NOBODY BEATS THE WIZ mark(s) with Opposer.

9. Opposer owns priority trademark rights in the mark(s) THE WIZ and NOBODY BEATS THE WIZ in connection with the goods in its trademark registrations, including, but not limited to, consumer electronics, appliances, computers, hardware, software, audio and visual equipment, including, but not limited to, smartphones and tablets.

10. Opposer's first use of THE WIZ and NOBODY BEATS THE WIZ mark(s) in connection with the products in its trademark applications predates the filing date of the opposed application, and predates any first use by Applicant of WIZFUN.

11. Applicant's proposed use of and application for WIZFUN is without Opposer's consent or authorization.

12. The applied-for mark is confusingly similar to Opposer's trademarks, and the goods for which Applicant's mark is intended to be used directly overlaps with Opposer's goods and services. Opposer sells some of the same goods and services as Applicant - - electronics accessories, including smartphone and tablet covers and cases and other accessories, among other similar products to Applicant.

13. Registration by Applicant of the applied-for mark would be damaging to Opposer and is likely to cause confusion, mistake, deception, and dilution as outlined below.

14. Registration and use by Applicant of its proposed mark will cause dilution of the distinctive qualities of Opposer's trademarks. Such dilution will likely cause irreparable harm and injury to the widespread reputation and goodwill developed as a result of Opposer's substantial efforts.

15. Applicant's application to register the WIZFUN mark was filed on a Section 1(a) actual use basis.

16. Opposer's U.S. trademark registrations and first use dates for its trademarks are all prior to, predate, and have priority over Applicant's first use date and application for its mark.

17. Applicant's application to register the WIZFUN mark was published for opposition on May 24, 2016, and Opposer subsequently filed and was granted a 90-Day Request for Extension of Time to Oppose for Good Cause. Thus, this opposition is being timely filed within the 90-day opposition period.

18. Applicant's applied for mark is confusingly similar to Opposer's THE WIZ and NOBODY BEATS THE WIZ mark(s) whereby use of Applicant's WIZFUN mark on the goods recited in Applicant's application is likely to cause confusion, or to cause mistake or deception among the trade and the purchasing public with Opposer's THE WIZ and NOBODY BEATS THE WIZ mark(s).

19. The registration of Applicant's mark in connection with the goods specified in Applicant's application would be in direct conflict with the proper function of a trademark; that is, as a designation of the sole and exclusive origin of goods or services, considering Opposer's prior registration, prior use of and common law rights in THE WIZ and NOBODY BEATS THE WIZ mark(s).

**COUNT I – LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. §1052(d)**

20. Opposer realleges the allegations in Paragraphs 1 through 19.

21. Applicant's use and/or intended use of the mark for the goods and services set forth in Application Serial No. 86/865,182 is likely to result in confusion, mistake, and/or deception in that consumers are likely to believe Applicant's goods and services are Opposer's goods and services, or the goods and services of a person or company that is sponsored, authorized or licensed by, or in some other way legitimately connected with, Opposer.

**COUNT II – SUGGESTION OF A FALSE CONNECTION UNDER 15 U.S.C. § 1052(a)**

22. Opposer realleges the allegations in Paragraphs 1 through 21.

23. Since prior to the filing date of the opposed application, and by virtue of Opposer's registration, use, advertising, and promotion of its trademarks in connection with the sale, advertising, and marketing of Opposer's various products and services, the Opposer's trademarks have become well-known and closely identified with Opposer by consumers.

24. Applicant's applied for mark will be understood by consumers to refer to Opposer, and consumers will erroneously believe that Applicant's marks and the goods and services provided thereunder, are associated with or authorized by, Opposer.

25. Opposer is not connected with Applicant's goods and services, nor has Opposer authorized Applicant's use of the marks in connection with such goods.

26. Opposer's trademarks are sufficiently well-known and closely identified with Opposer such that Applicant's use and registration of the mark for the applied for goods will falsely suggest to consumers a connection with Opposer, all in violation of 15 U.S.C. §1052(a).



### **COUNT III – DILUTION**

27. Opposer realleges the allegations in Paragraphs 1 through 26.

28. Pursuant to 15 U.S.C. §1063, registration of the mark in Applicant's Serial No. 86/865,182 will damage Opposer because such registration is likely to cause dilution by blurring and/or tarnishment of Opposer's THE WIZ and NOBODY BEATS THE WIZ mark(s) in violation of 15 U.S.C. §1125(c).

**WHEREFORE**, Opposer respectfully requests that this opposition be sustained, that Applicant's above-identified application be rejected, and that the registration of the mark shown in Application Serial No. 86/865,182 be refused.

Please address all correspondence to Celeste M. Butera, Hoffmann & Baron, LLP, 6900 Jericho Turnpike, Syosset, New York 11791 ([cmbdocket@hbiplaw.com](mailto:cmbdocket@hbiplaw.com)).

Dated: September 20, 2016

Respectfully submitted,

/s/ Celeste M. Butera  
Celeste M. Butera

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*Attorneys for Opposer*  
*P.C. Richard & Son Long Island Corporation*

## CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2016, the foregoing NOTICE OF OPPOSITION was served by delivering a true copy of the aforesaid document in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee indicated below and via electronic mail:

Aihua Tang  
d/b/a WizFun  
375 W. Duarte Road #208  
Arcadia, CA 91007  
aciusa@foxmail.com

*Applicant*  
*Aihua Tang d/b/a WizFun*

/s/ Celeste M. Butera  
Celeste M. Butera